and for this reason the statute of limitations does not run against the city with respect to encroachments therein. *Quinn* v. *Baage,* 138 Ia. 426, 114 N. W. 205; *City of Waterloo* v. *Union Mill. Co.,* 72 Ia. 437; *Taraldson* v. *Town of Lime Springs,* 92 Ia. 187. As a general rule the maxim, "*Nullum tempus occurrit regi,*" does not apply to corporate bodies such as cities, towns and other municipalities, especially when private rights have become involved. *Clements* v. *Anderson,* 46 Miss. 581; *Knight* v. *Heaton,* 22 Vt. 481; *Metropolitan R. R. Co.* v. *District of Columbia,* 132 U. S. 1; *Arapahoe Village* v. *Albee,* 24 Neb. 242. 3 DILLON MUN. CORP., Ed. 5, § 1188. Even though their powers in a limited sense are governmental. *May* v. *Cass County District,* 22 Neb. 205; *Armstrong* v. *Dalton,* 15 N. C. 568; *Dudley* v. *Frankfort Trustees,* 12 B. Mon. 610; *Big Rapids* v. *Comstock,* 65 Mich. 78. However, as regards a right purely public, the statute of limitations does not run against a municipality, and the use of streets is regarded as such a right. *Commonwealth* v. *Alburger,* 1 Whart. 469. 3 DILLON MUN. CORP., Ed. 5, §§ 1189 and 1193, and cases cited. The rule as deduced from a comparison of the authorities would seem to be, as to titles to streets by adverse possession, that the statute of limitations does not run as to a municipality's claim in the same unless circumstances creating an equitable estoppel intervene. 3 DILLON MUN. CORP., Ed. 5, § 1194. No such circumstances appeared in the principal case, as neither the city nor the abutting owners had exercised any positive act of ownership over the property involved. By a strange intermingling of the Iowa rule and the general rule in the matter of vacated streets, the court arrived at a conclusion just to all concerned but not easy to sustain on legal principle under the Iowa authorities.

PLEADING—ABSENCE OF AD DAMNUM CLAUSE.—Action in case for injury due to defendant's negligent maintenance of an open ditch. The declaration did not contain the usual *ad damnum* clause but there appeared at the commencement the following, "(plaintiff)—complains of—(defendant), who has been duly summoned to answer the plaintiff of a plea of trespass on the case, to recover against him the sum of ten thousand dollars ($10,000.00) damages." Defendant demurred to the declaration because of absence of the *ad damnum* clause, contending that the above statement was simply an introductory recital of the contents of the summons, and not an averment of damages. *Held,* the demurrer was properly overruled. POFFENBARGER, J., dissenting. *Jenkins* v. *Montgomery* (W. Va. 1911), 72 S. E. 1087.

The court held that whether the statement be regarded as an averment or merely as a recital, still it was sufficient because it accomplished the purpose of the *ad damnum* clause, *i. e.,* to inform the defendant of the amount of damages, and said "Now, if after verdict the writ is properly regarded as a part of the record, to support the verdict, why may it not be so regarded on demurrer to sustain the declaration? Is not the laying of damages in the declaration mere formal matter? Is it not a statement of a legal conclusion, and not, therefore, an indispensable averment? Our conclusion is that it is sufficient if it appear in the declaration in any form." In the previous case of *McGlamery et al.* v. *Jackson,* 67 W. Va. 417, the court had held, POFFENBARGER,

J., rendering the opinion, that the total omission of the *ad damnum* clause in a declaration in case was fatal on demurrer, and if the demurrer is overruled the judgment will be arrested on motion; that the *ad damnum* clause is one of substance and not mere matter of form, though holding that had there been no demurrer the verdict would have cured the defect, which the court admitted was a strong argument against holding it fatal on demurrer. Though in the *McGlamery* case, *supra*, no damages were mentioned at all, and in the principal case they were mentioned in the commencement of the declaration, yet the principal decision seems to indicate a more liberal construction of pleadings, the court apparently being won over by the reasoning, which it had previously in the *McGlamery* case admitted was strong. As a general rule the omission of the *ad damnum* clause is cured by verdict. *Farley* v. *Nelson*, 4 Ala. 183; *Koehler* v. *King*, 119 Ill. App. 6; *Brauns* v. *Glesige*, 130 Ind. 167; *Humphreys* v. *Daggs*, 1 Greene (Ia.) 435; *Poindexter* v. *Turner*, Walk. (Miss.) 349; *Fox* v. *Graves*, 46 Neb. 812; *Ward* v. *Stevenson et al.*, 15 Pa. St. 21; *Groves* v. *Dodson*, 8 Yerg. 161; *Palmer* v. *Mill*, 3 Hen. & M. 502 (Va.); *British Col. Bank* v. *Pt. Townsend*, 16 Wash. 450; *Weaver* v. *Miss. & Rum River Boom Co.*, 28 Minn. 542; *Bartlett* v. *O. F. Savings Bank*, 79 Cal. 218; *Loeb* v. *Kamak*, 1 Mont. 152; see also *Denver etc. Ry. Co.* v. *Klaes*, 40 Colo. 125. In the following cases the omission was held fatal on demurrer. *Brownson* v. *Wallace*, Fed. Cas. No. 2,042; *Treusch* v. *Kamke*, 63 Md. 274; *Deveau* v. *Skidmore*, 47 Conn. 19; but see *Vincent* v. *Mutual Reserve Fund L. Ass.*, 75 Conn. 650. It is generally held however that in the absence of the *ad damnum* clause a judgment by default cannot be sustained, because the plaintiff is not entitled to recover more than he has demanded in his pleadings. *Pittsburgh Coal Min. Co.* v. *Greenwood*, 39 Cal. 71; *May* v. *State Bank*, 9 Ind. 233; *Andrews* v. *Monilaws*, 8 Hun 65.

PLEADING—A LIBERAL VIEW AS TO WHAT CONSTITUTES VARIANCE.—Action for death due to negligence of defendant. The complaint alleged that a servant of defendant "caused or allowed said engine to run upon or against said intestate." Proof that the engine did not touch him but that he was killed by reason of a boxcar eighteen car lengths from the engine being backed into him. *Held*, not a material variance, ANDERSON, J., and MAYFIELD, J., dissenting. *Alabama Great Southern R. Co.* v. *McFarlin* (Ala. 1911), 56 South. 989.

The court said that "the engine was the instrument which caused the collision" whether the intestate was struck by the engine or something attached to it. But the rule is that proofs must correspond substantially with the allegations. 31 CYC. 700; 22 ENCY. PL. & PR. 527. In *Wabash Western Ry. Co.* v. *Friedman*, 146 Ill. 583, the court said that matters of description, though unnecessary, must be proved, and that "one great object of a declaration is to notify the defendant of the nature and character of the plaintiff's demand, so that he may be able to prepare for a defense; but if one ground of action may be alleged and another proved, a declaration would be a delusion, and instead of affording a defendant notice of what he was called upon to meet, it would be a deception." In *Pennington* v. *Detroit, etc. Ry. Co.*, 90 Mich. 505, cited